

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

CHRISTOPHER UMBERGER,

Plaintiff,

v.

CIVIL ACTION NO. 5:08-cv-00872

DOMINICK MCCLAIN, D.O.,

Defendant.

MEMORANDUM OPINION

Pending before the Court are the United States' Motion to Dismiss Dominick McClain, D.O., as a Defendant and Substitute the United States of America [Docket 3], the United States' Motion to Dismiss for Lack of Subject Matter Jurisdiction [Docket 5], Plaintiff's Motions to Remand and for a Hearing upon the Removal and Remand Issues [Dockets 8 and 15]. By Standing Order entered on August 1, 2006, and filed in this case on June 26, 2008, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings and a recommendation (PF&R). Magistrate Judge VanDervort filed his PF&R [Docket 17] on January 5, 2009, recommending that this Court **GRANT** the United States' Motion to Dismiss Dominick McClain, D.O., as a Defendant and Substitute the United States of America, **GRANT** the United States' Motion to Dismiss for Lack of Subject Matter Jurisdiction, **DENY** Plaintiff's Motions to Remand and for a Hearing upon the Removal and Remand Issues, **DISMISS** this action, and **REMOVE** it from the Court's docket.

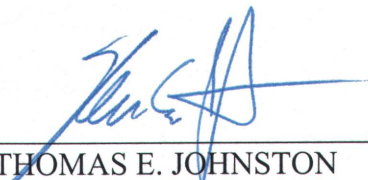
The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and Plaintiff's right to appeal this Court's Order. *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge VanDervort's PF&R were due by January 23, 2009, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). To date, no objections have been filed.

Accordingly, the Court **ADOPTS** the PF&R [Docket 17] in its entirety, **GRANTS** the United States' Motion to Dismiss Dominick McClain, D.O., as a Defendant and Substitute the United States of America [Docket 3], **GRANTS** the United States' Motion to Dismiss for Lack of Subject Matter Jurisdiction [Docket 5], **DENIES** Plaintiff's Motions to Remand and for a Hearing upon the Removal and Remand Issues [Dockets 8 and 15], and **DISMISSES** this action. A separate Judgment Order will enter this day implementing the rulings contained herein.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: February 25, 2009



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE